

IN THE MATTER OF)
)
ESTABLISHING JUST AND REASONABLE RATES) WC DOCKET NO.
07-135
FOR LOCAL EXCHANGE CARRIERS)
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On October 2, 2007, the Federal Communications Commission (“Commission”) released a Notice of Proposed Rulemaking (“NPRM”) titled “Establishing Just and Reasonable Rates for Local Exchange Carriers.” Adventure Communication Technology, L.L.C. (“Adventure”) hereby submits its initial comments on this NPRM.

Background

Aventure filed a tariff with the Commission in full compliance with Commission rules under Section 61.26 which allows competitive Local Exchange Carriers

(“LEC”) to tariff interstate access charges if the charges are no higher than the rate charged for such services by the competing incumbent LEC (the benchmark rule). Additionally, Aventure meets the Commission’s definition of a rural competitive LEC.

Illegal Self Help

On or about September 1, 2006, Aventure began billing carriers for both Intrastate and Interstate access charges. On or about November, 2006, AT&T began withholding payment for billed access charges in an act of illegal self help. On or about January, 2007, Verizon began withholding payment for billed access charges in an act of illegal self help. On or about March 2007, Qwest began withholding payment for billed access charges in an act of illegal self help. On or about April 2007, Sprint began withholding payment for billed access charges in an act of illegal self help.

The close proximity of the withholding of payment is suggestive of possible collusion between these dominant carriers. While these Interexchange Carriers (“IXC”) had numerous options at their disposal to protest the access charges or rates, including tariff investigations and informal and formal complaints, they all, again suggestive of possible collusion, instead chose the route of illegal self help by withholding payment, an action which continues on today.

The IXCs insist that Aventure’s access charge rates exceed a “rate-of-return,” yet Aventure, as a CLEC, is considered a non-dominant carrier by the Commission and is subject to limited rate-of-return regulation. That regulation is “the benchmark rule” (Section 61.26) which Aventure follows, regulation that was enacted by this Commission. Further, Aventure has no control over the access charge rates set by the incumbents in the areas Aventure serves. Aventure has no ownership interest in any incumbent telephone company. In summary, Aventure charges an access charge rate, set by the Commission, and the IXCs do not like that rate, so they refuse to pay those access charges in an illegal act of self help.

Many of us do not like the price of gasoline we use to power our motor vehicles, yet, if we were to pull into the filling station, fill our tank and drive off without paying, we could expect to be detained by law enforcement officials. The IXCs have filled their tanks and have driven off without paying. We must remember, the IXCs have charged their end-user for a long-distance call at whatever rates they bill end-users, and presumably have been paid for those charges, minus any allowance for uncollectible accounts. By illegally engaging in self help, they have gained financially from this activity by obtaining free use of these funds for, in some cases,

over a year, causing the carriers they have not paid to incur additional costs to continue to provide service to customers.

Blocking of Service

Aventure, along with many other LECs, experienced instances of call blocking earlier in 2007. Several customers were reporting instances of call blocking and call degradation to our offices. The Commission, on its own motion, issued a Declaratory Ruling and Order on June 28, 2007. In that Declaratory Ruling and Order, the Commission stated “we seek to alleviate any possible confusion by clarifying that carriers cannot engage in self help by blocking traffic to LECs allegedly engaged in the conduct described herein.” The order went on to say “Commission precedent provides that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way” and that “we find the circumstances currently alleged do not warrant call blocking.”

Now, the same IXCs who were involved in instances of call blocking and call degradation earlier this year came before the Commission with unclean hands, demanding the Commission enact piecemeal regulation against carriers who, from all accounts, followed Commission rules. It defies logic, and certainly cannot be classified a “just and reasonable” action.

Access Stimulation

In the NPRM, the Commission wisely acknowledges the IXCs engage in access stimulation. “We understand that carriers complaining about the access stimulation arrangements also offer conferencing and other services that may result in increased traffic.” This again points out the irony of the current situation where large, dominant carriers are complaining that a small number of small non-dominant carriers are engaging in an activity the large dominant carriers are themselves engaged in, and attempting to limit the small carrier’s ability to engage in these activities by using and abusing the Commissions authority.

What exactly is “access stimulation”? Many of us remember the old commercials encouraging customers to use long-distance services, the intention of which was to increase the amount of calling by end user customers. Just as an airline would rather have a full plane, and a hotel likes to see their rooms all full, it is not unusual for a LEC or CLEC, or even a larger dominant IXC, to want to see their facilities used to increase and generate additional revenue. AT&T, Verizon, Sprint and Qwest all advertise their services. Should the Commission regulate the amount of advertising these large, dominant carriers place?

These large dominant carriers, who have engaged in illegal self help by not paying for lawfully billed access charges and, in some cases, engaged in call blocking and degradation in violation of Commission rules now want the Commission to enact

harsh regulation against the small non-dominant carriers to prohibit them from engaging in the very same activities the large dominant carriers routinely engage in. There is no other explanation of the actions of these IXC's.

Competitive LECs

The NPRM acknowledges that "(C)ompetitive LECs may file access tariffs if their rates comply with the benchmarking requirements of section 61.26." Both Verizon and AT&T, large dominant IXC's, have proposed new onerous regulation on CLEC's, and particularly on CLEC's that qualify for the Rural Exemption created by the Commission in CC Docket No. 96-262; In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, SEVENTH REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING, Adopted April 26, 2001, Released: April 27, 2001.

Paragraph 68 of that Order reads as follows:

Our level of comfort in creating a rural exemption is markedly increased by the fact that the record indicates it likely will apply to a small number of carriers serving a tiny portion of the nation's access lines.

Now, if we are to believe these large dominant IXC's, "a small number of carriers serving a tiny portion of the nation's access lines" are causing undue economic harm to large dominant IXC's, companies who, in the last few years, have gone through several consolidations creating less competition than there was in 1996 when the Telecommunications Act of 1934 was rewritten. Now we are to believe these few dominant carriers need the protection of regulation from a few small carriers in an industry that was opened to competition in 1984.

Aventure proposes that any increase in regulation of CLEC's, and especially rural CLEC's, as suggested in the NPRM will have the chilling effect of reducing the chance for competition and reduce the amount of choice in telecommunication providers for consumers, especially in rural America. Perhaps this is what these oligopolies want; a reduction in potential competitors for their services. Can there possibly be any other explanation for their disregard of Commission rules?

Aventure has already had to delay or postpone planned entry into several locations due to the withholding of payment by AT&T, Verizon, Qwest and Sprint, not to mention the economic hardship incurred by the onslaught of legal actions brought by these large, dominant carriers in an effort to squeeze the life out of smaller carriers such as Aventure.

Conclusion

Aventure proposes the Commission reject the proposals of Verizon and AT&T as they relate to CLECs and rural CLECs. This suggested piecemeal regulation proposes onerous regulation and will only serve to economically harm fledgling companies, such as Aventure, and reduce or eliminate choices available to consumers in rural areas.

Secondly, Aventure proposes that AT&T, Verizon, Qwest and Sprint, companies who the record clearly shows have violated Commission rules, be subject to investigation and possible forfeiture for their actions in violating Commission rules. Additionally, it is these companies, not Aventure, who should be subject to additional oversight and reporting requirements of the Commission based on their blatant and willful disregard of Commission rules.

Lastly, the Commission should move to enact comprehensive Access charge reform rather than enact piecemeal regulation of a broken system. None of the issues in this NPRM are so insidious as to require such action at this time. Comprehensive reform of Access charges is the only true answer to these continuing issues.

Respectfully Submitted

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